

Madras High Court
Madras High Court
The Registrar vs The Registrar on 30 April, 2013
DATED: 30.04.2013

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

W.P.No.1253 of 2010

The Registrar,

Thiyagarajar College of Engineering,

Madurai 625 015. .. Petitioner

Versus

1. The Registrar,

Tamil Nadu Information Commission,

Kamadenu Super Market,

1st Floor, Old No.273, New No.378,

Anna Salai, Teynampet, Chennai-18.

2. Mr.T.K.Ravindranath,

No.6, Kakka Thoppu Street,

Madurai 625 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writs of Certiorari, to call for the records relating to the order, dated 22.12.2009, made in Case No.20402/Enquiry/2009, on the file of the first respondent and quash the same.

For Petitioners .. Mr.G.Masilamani, SC

for M/s.G.M.Mani Associates

For 1st Respondent .. Mr.G.Rajagopalan, SC

for M/s.G.R.Associates

For 2nd Respondent .. Mr.B.Ravi

O R D E R

The petitioner, Thiagarajar College of Engineering, an Autonomous Private Engineering College, affiliated to Anna University, Tirunelveli, has challenged the order of the Tamil Nadu Information Commission, Chennai, which held that the College is a Public Authority, amenable to the jurisdiction of the Commission.

2. Facts of this case are as follows:

The College is aided by the State Government for payment of salary to teaching and non-teaching staff. Five Under-Graduate and six Post-Graduate posts are aided by the Government. That apart, the College is running 7 Under Graduate and 8 Post Graduate courses, from out of their own funds, without any aid. Mr.T.K.Ravindranath, second respondent herein, has made an application on 16.07.2009, seeking certain information under the Right to Information Act, 2005 (hereinafter referred to as "the RTI Act"). A reply has been sent by the Registrar of the College that it is not a public authority, as contemplated under the Act and therefore, no information can be furnished. An appeal in Case No.20402/Enquiry/2009, has been preferred to the Tamil Nadu Information Commission, Chennai, first respondent herein by the second respondent, claiming inter alia that the College is established and funded by the State and Central Governments for the past 50 years and that salary to the staff is being paid by the Government of Tamil Nadu. In the said appeal, the petitioner-College has received a notice before the first respondent on 03.12.2009 to appear before the Commission on 09.12.2009 at 11.30 A.M.

3. On receipt of summons, the learned counsel engaged by the petitioner-College appeared before the Commission and sought time to file reply/objections and other documents, in support of their contention that the College is not a public authority, coming under the purview of the abovesaid Act. It is the case of the petitioner, the first respondent-Commission, on reading of the 'Letter Head' of the College, containing the words, "A Government Aided ISO 9001-2000 Certified, Autonomous Institution affiliated to Anna University", has pre-determined the issue that the College is a public authority, under the Right to Information Act and refused to grant adjournment sought for by their counsel. However, on the same day, the Commission has passed an order, concluding that the College is a public authority and thereafter, granted three days' time to file their reply and to furnish the relevant documents. As the time granted by the Commission was very short, the College requested their learned counsel to seek for further time to file a counter. Accordingly, a memo, dated 11.12.2009, was filed before the first respondent-Commission for extension of time to file their reply. The Commission did not pass any orders on the application, either granting time or rejecting the said application. Since no reply was forthcoming, the College bona fide believed that the first respondent-Commission has granted time, as requested by them and thereafter, they filed their reply/written submissions before the first respondent-Commission, on 23.12.2009.

4. The College has received an order, dated 22.12.2009, from the first respondent-Commission, in conformity with the earlier order, dated 09.12.2009, stating that notice has already been sent on 30.11.2009 itself and though sufficient time was granted for the College to place all the materials and submit their arguments, no reply was forthcoming and hence, the Commission has rejected the contention of the petitioner-College. In these circumstances, the petitioner-College has filed the present Writ Petition to quash the order of the first respondent-Commission, dated 22.12.2009 made in Case No.20402/Enquiry/2009.

5. Assailing the correctness of the order, Mr.G.Masilamani, Learned Senior Counsel for the petitioner submitted that the notice sent by the Commission, dated 03.11.2009, directing the petitioner-College to appear for an enquiry on 09.12.2009, was received by the College, only on 03.12.2009 and since the College was not functioning, on account of the Semester vacation from 09.11.2009 to 06.12.2009 and in view of paucity of time, to collect all the particulars, the College could not place the materials before the Commission, to establish that the College would not fall within the purview of RTI Act. He therefore submitted that granting only three days' time to the College, to submit their reply/objections itself, is a gross violation of the principles of natural justice.

6. Inviting the attention of this Court to the provisions of Right to Information Act, learned Senior Counsel for the petitioner-College submitted that when the second respondent has made an application under the RTI Act, the burden of establishing that the petitioner-College is a public authority, amenable to the jurisdiction of the first respondent-Commission is on the second respondent and pre-determination of the issue, by the Commission, on the basis of the words, "A Government Aided ISO 9001-2000 Certified, Autonomous Institution affiliated to Anna University", mentioned in the letter head, without giving sufficient opportunity of hearing, is unreasonable, arbitrary and it is in violation of Article 14 of the Constitution of India.

7. Learned Senior Counsel further submitted that the burden to establish that the petitioner-College is a public authority, coming within the definition under Section 2(h)(d) of the Act, cannot be shifted on the College, for the reason that a person, who claims that the petitioner-College is not a public authority, has to prove, on the basis of documentary evidence. According to him, the College is not a Government body or an instrumentality of State, which alone can be brought, within the purview of Right to Information Act and as per the preamble to the Act, no private organisation/institution, would be amenable to the jurisdiction of the Commission.

8. It is also his further contention that the College is run by Kalaithanthai Karumuttu Thiagaraja Chettiar Memorial Charitable Trust and merely because, the College receives certain amount of grant from the Government, it would not be proper to classify the Institution as the one, which is substantially financed by the Government. In this context, he submitted that the amount of salary grant received from the Government constitutes only 37% of the total expenditure of the petitioner-College and therefore, the College cannot be said as substantially financed, as per Section 2(h)(d)(ii) of the Act.

9. Referring to Section 18(3) of the Right to Information Act, learned Senior Counsel for the petitioner submitted that the Commission, while inquiring into any matter under this Section, has the same powers, as that of the Civil Court, while trying a suit under the Civil Procedure Code, 1908, in respect of the following matters, namely, summoning and enforcing attendance of persons and compel them to give oral or written evidence on oath and to produce documents or things; requiring the discovery and inspection of document; receiving evidence on affidavit, etc., before arriving at any conclusion as to whether the petitioner-College is a public authority under the Act and that the Commission has failed to exercise the jurisdiction in proper manner, as contemplated under the Act and establish as to whether the petitioner-College is substantially funded by the Government, before arriving at the conclusion that the College is a public authority.

10. Learned Senior Counsel for the petitioner further submitted that when the powers conferred under the Act mandates a thorough enquiry and also provides for a reasonable opportunity to be given to the persons, against whom, an adverse order is passed, there cannot be any unilateral decision by the Commission, on the sole basis of a Letter Head, containing the abovesaid words and such an arbitrary exercise of power, has resulted in a lacunae order, by a mere rule of thumb, which requires intervention by this Court. According to him, the manner in which, the Commission has proceeded to pre-determine the issue, holding that the petitioner-College is a public authority, solely based on the Letter Head, has caused prejudice and affected the interest of the petitioner-College and that the College has suffered a casualty, at the hands of the Commission, by which, there is a deep inroad into the privacy of the College.

11. Per contra, Mr.G.Rajagopalan, learned Senior Counsel appearing for the first respondent-Commission submitted that the petitioner-College is a public authority, substantially funded by the State Government and therefore, it would fall under the purview of Section 2(h)(d) of the Right to Information Act. Therefore, he submitted that the order of the Commission is perfectly in order.

12. Reiterating the averments made in the counter affidavit, Mr.B.Ravi, learned counsel for the second respondent submitted that the petitioner college is a Government aided private engineering college, coming under the control of Director of Technical Education, Chennai. It is governed by the statutes, viz., Grant in aid code and AICTE Act. The college is also receiving grant from the Government of Tamilnadu for payment of

salary of Teaching and non teaching staff and under various heads. Therefore, he submitted that the petitioner-College is a public authority under Section 2(h) of the Right to Information Act.

13. Learned Counsel for the second respondent further submitted that the Government of India promulgated Right to Information Act, 2005, to enable the citizens to obtain information from public authorities in order to promote transparency and accountability in the working of every public authority. The Legislature has desired that transparency of information is vital to the functioning of Government and other authorities. Under Section 5 of the Act, a public authority will be designated as a public information officer. Section 4 of the Act refers to the obligation of the public authorities. Section 8 provides for exemption to disclosure of information. In other words, except the matters, which are provided under the Section 8 of the Act, the public authorities are bound to furnish other information.

14. According to the second respondent, though the petitioner-College claims that it is not governed by the provisions of the Act, it is admitted by the petitioner in the affidavit filed in support of the writ petition that it is receiving grant in the form of salary to teaching and non- teaching staff. According to the College, apart from aided courses, it is also having unaided courses and once aid is received from government, that alone is sufficient to hold that it is a public authority and the grant received cannot be compared to the total expenditure involved in running of the college. Therefore, he submitted that any interpretation, contrary to the above, is unsustainable, and that it would defeat the very object of the Act itself.

15. Learned counsel for the second respondent further submitted that the College, in their circular No.REG/PIO/2006, dated 03.01.2006, has informed the staff that college has appointed a Public Information Officer and also an appellate authority. The second respondent has sought for certain information from the petitioner-College under the Right to Information Act through the Registrar of the College, the Public Information Officer, relating to fees structure of M.E., M.C.A. But the College has refused to furnish the information, by stating that it is not governed by the Act.

16. He further submitted that in the letter head of the petitioner, it is clearly stated that it is a Government Aided ISO 9001-2000 certified autonomous institution, affiliated to Anna University and therefore, the petitioner-College is a public authority, under the Act and bound to furnish the information. Hence, prayed for dismissal of the Writ Petition.

Heard the learned counsel for the parties and perused the materials available on record.

17. Before advertng to the facts of this case, it is relevant to have a cursory look at certain provisions of the Right to Information Act, 2005.

As per Section 2(f) of the Right to Information Act, 2005, "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

18. Section 2(h) of the Right to Information Act, 2005, defines "public authority" means any authority or body or institution of self government established or constituted-

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government,

and includes any-

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

"record" includes-

(i) any document, manuscript and file;

(ii) any microfilm, microfiche and facsimile copy of a document;

(iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(iv) any other material produced by a computer or any other device;

19. Section 8 of the Act deals with certain exemptions from disclosure and it reads as follows:

8. Exemption from disclosure of information.--(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any Court of law or Tribunal or the disclosure of which may constitute contempt of Court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reason thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or

over:

Provided further that those matters which come under the exemption specified in this section shall not be disclosed;

(i) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-Section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-Section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request made under Section 6 shall be provided to any person making a request under that Section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act .

20. Similarly Section 3 of the Tamilnadu Right deals with the rights of a person to seek for information subject to certain exceptions. The said Section reads as follows:

Right of access to information

3.(1) Every person bonafide requiring information may have access to such information in accordance with the procedure specified under this Act.

(2) Notwithstanding anything contained in sub-section (1), no person shall be given information relating to

(a) information relating to defence security;

(b) information whose disclosure will prejudice the security, integrity and sovereignty of the Nation and the State;

(c) information whose disclosure would harm the conduct of international relations or affairs;

(d) information received in confidence from foreign Governments, foreign courts or international organisations;

(e) information whose disclosure would harm the frankness and candour of internal discussion, including:-

(i) proceedings of Cabinet and Cabinet committees;

(ii) internal opinion, advice, recommendations, consultation and deliberation;

(iii) projections and assumptions relating to internal policy analysis; analysis of alternative policy options and information relating to rejected policy options;

- (iv) confidential communications between departments, public bodies and regulatory bodies;
- (f) information relating to confidential communications between Ministers and the Governor;
- (g) information whose disclosure would prejudice the administration of justice, including fair trial and the enforcement or proper administration of the law;
- (h) information whose disclosure would prejudice legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigation (whether actual or likely) or whose disclosure is has been or is likely to be addressed in the context of such proceedings;
- (i) information covered by legal professional privilege;
- (j) information whose disclosure would prejudice the prevention, investigation or detection of crime, the apprehension of offenders;
- (k) information whose disclosure would harm public safety or public order;
- (l) information whose disclosure would endanger the life or physical safety of any person, or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (m) information whose disclosure would increase the likelihood of damage to the environment; or rare or endangered species and their habitats;
- (n) information whose disclosure would harm the ability of the Government to manage the economy, prejudice the conduct of official market operations, or could lead to improper gain or advantage to any person;
- (o) information whose disclosure would prejudice the assessment or collection of tax, duties, or assist tax avoidance or evasion;
- (p) information including commercial confidences, trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of the third party;
- (q) information whose disclosure could lead to improper gain or advantage or would prejudice,
 - (i) the competitive position of a department or other public body or authority;
 - (ii) negotiations or the effective conduct of personnel management or commercial or contractual activities;
- (r) information held in consequence of having been supplied in confidence by a person who,
 - (i) gave the information under a statutory guarantee that its confidentiality would be protected; or
 - (ii) was not under any legal obligation, whether actual or implied, to supply it, and has not consented to its disclosure;
- (s) information whose disclosure is prohibited under any enactment, regulation or international agreement;

(t) information whose release would constitute a breach of Parliament/Legislative Assembly/Council Privilege;

(u) the documents referred in sections 123 and 124 of the Indian Evidence Act, 1872,

(v) any matter which is likely to, -

(i) help the commission of offence;

(ii) help or facilitate escape from legal custody or affect prison security; or

(iii) Impede the process of investigation or apprehension or prosecution of offenders.

(3) (a) Any person who wants to have access to the information may make an application in the manner prescribed to the Competent Authority in such form with such particulars, as may be prescribed.

(b) Where an application is made under clause (a) and the information is not available with the Competent Authority but is available with another department or authority, the Competent Authority may transfer the application to the Competent Authority with whom such information is available and inform the applicant accordingly. The Competent Authority to whom such application is transferred shall furnish the information within thirty working days from the date of receipt of the application from the Competent Authority from whom it has been referred or received. (c) Where an application is so transfer red to a department or authority, the head of that department or authority shall be deemed to be Competent Authority.

(d) (i) Upon the receipt of an application requesting for an information, the Competent Authority shall consider it and pass orders thereon either granting or refusing the request, as soon as practicable and in any case, within thirty working days from the date of receipt of application.

(ii) In other cases, the Competent Authority shall take all reasonable steps to inform the applicant of its decision on the request as soon as practicable.

(4) (a) If in the opinion of the Competent Authority any information, if disclosed, is likely to

cause breach of the peace or cause violence, or disharmony among the section of the people on the basis of religion, language, caste, creed, community or if it is prejudicial to public interest, the Competent Authority shall refuse to give information.

(b) Any application made under clause (a) shall be rejected, for reasons to be recorded in writing, if in the opinion of the Competent Authority, -

(i) any such information sought falls in any one or more categories of items listed under section 3(2), or

(ii) the disclosure of the information sought would be prejudicial to the maintenance of public order, or maintenance of essential services and supplies .

21. The main contention of the petitioner-college is that it is not a public authority, coming within the definition clause under Section 2(h)(d) of the abovesaid Act. According to them, the College is neither a Government-College nor an instrumentality of the State, which can be brought within the purview of the Right to Information Act, as per the preamble of the Act and no private organisation/institution would be amenable to the jurisdiction of the Commission.

22. Imparting education is now recognised as a public duty, taken up by the private institutions, duly recognised by the competent authorities, either under the Statute or Government orders, issued from time to time, till a suitable legislation is made. Article 162 of the Constitution of India deals with the Executive Power of the State. Executive Function of the State comprises of both determination of the policy and implementation of the same, by issuing appropriate Government Orders. Even if there is no enactment covering a particular aspect, the Government can carry on the administration by issuing administrative directions and instructions, until the legislature makes a law in that behalf. The State Government can act in relation to any matter with respect to which the State legislature has power to make rules even if there is no legislation to support the executive action.

23. Though the internal administration of the College vests with its Management, regarding enforcement of discipline, dress code, etc., but the Institution has to scrupulously follow the admission guidelines, as prescribed by the Government and the Director of Technical Education, Chennai, from time to time. Even in the matter of staff recruitment, Government Orders issued from time to time, make it clear that the Institution, which gets permission from the Government, should act in conformity with the rules and orders issued by the Government.

24. It is also well settled that private educational institutions supplement the functions performed by the institutions established by the Government in imparting education. It is no more an independent activity. It is an activity supplemental to the principle activity carried on by the State. No private educational institution can survive or subsist without recognition and/or affiliation. The bodies which grant recognition and/or affiliation are the authorities of the Government or a body constituted under an enactment.

25. The contention of the petitioner is that it is not substantially financed, either directly or indirectly by the funds provided by the Government of India or Government of Tamilnadu and therefore the College is not a "public authority" as defined under Section 2(h) of the Right to Information Act, 2005. It is also the contention of the petitioner that the College is not established, constituted or owned or controlled by the Government of Tamilnadu. The words "body owned", "controlled" or "substantially financed" have not been defined under the Act or the rules framed thereunder and that "public authority" includes a non government organisation substantially financed, directly or indirectly by funds provided by the appropriate government. The term "substantial" employed in Section 2(h) of the Act has come up for consideration before this Court in Tamilnadu Road Development Company Limited, represented by its Director-in-charge, Chennai Vs. Tamilnadu Information Commission, represented by its Registrar, Chennai and another, reported in (2008) 8 MLJ 17, wherein, this Court held as follows: "The word "substantial" is not defined in the Act. For the word "substantial" it is not possible" to lay down any clear and specific definition. It must be a relative one, however, "substantial" means real or actual as opposed to trivial. "Substantial" also means practicable or as far as possible, hence, the word 'substantial' not to be construed as higher percentage of the estimated amount or otherwise.

26. At paragraph Nos.15 to 18, 21 and 23, this Court in Tamilnadu Road Development Company Limited's case, has held as follows:

5. If we look at the definition of Section 2(h), which has been extracted herein above, it is clear that the appellant-company does not come under the provisions of Section 2(h)(a), (b), (c) or (d), but thereafter Section 2(h)(d) of the definition clause uses the word "includes". It is well known that when the word "includes" is used in an interpretation clause, it is used to enlarge the meaning of the words and phrases occurring in the body of the statute. Reference in this connection can be made to G.P. Singh's "Principles of Statutory Interpretation". In the 10th edition of the said treatise, the learned author formulated that when the word defined is declared to "include" such and such, "the definition is prima facie extensive" (page 175 of the book). In support of the aforesaid formulation, the learned author has referred to a number of decisions. The latest decision referred to in support of the aforesaid

proposition was rendered in the case of Associated Indent Mechanical P. Ltd. v w.b. Small Industries development Corporation Ltd., AIR2007SC788 of the report, the learned judges held as follows: "10. The definition of premises in Section 2(c) uses the word 'includes' at two places. It is well settled that the word 'include' is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include (see Dadaji alias Dina v. Sukhdeobabu AIR[1980]1SCR1135, Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., AIR [1987]2SCR1 and Mahalakshmi Oil Mills v. State of A.P., AIR 1989 SC 335: (1989) SCC 164."

16. Therefore, obviously the definition of bodies referred to in Section 2(h)(d)(i) of the RTI Act would receive a liberal interpretation, and here the words which fall for interpretation are the words "controlled or substantially financed directly or indirectly by funds provided by the appropriate Government.

17. We are here concerned with the interpretation of the definition clause in the RTI Act. The Act has been enacted "in order to promote transparency and accountability in the working of every public authority". In the Preamble to the Act, it is made clear that "democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed". From the Preamble to the Act it is clear that revelation of information may cause conflict with the other public interests including efficient operations of the Governments, but the Act has been enacted to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal.

18. The RTI Act thus attempts to inculcate openness in our democratic republic. It has to be accepted that one of the salience of openness in democracy is an access to information about the functioning of the public authorities.

21. The RTI Act is virtually enacted to give effect to citizen's right to know. Citizen's right to know has been construed by the Hon'ble Supreme Court as emanating from the citizen's right to freedom of speech and expression, which is a fundamental right. So, a legislation, which has been enacted to give effect to right to know, which is one of the basic human rights in today's world, must receive a purposive and broad interpretation.

23. The RTI Act has also provided a remedy for facilitating the exercise of the right to information and the reason for the remedy is also indicated in the Preamble to the Act. So going by the direction in Heydon's case [1584] 3 Co Rep 7 followed by the Supreme Court in Bengal Immunity Co. Ltd. v. State of Bihar [1955] 2 SCR 603 such an Act must receive a purposive interpretation to further the purpose of the Act. So any interpretation which frustrates the purpose of RTI Act must be eschewed. Following the said well known canon of construction, this Court interprets the expression "public authority" under Section 2(h)(d)(i) liberally, so that the authorities like the appellant who are controlled and substantially financed, directly or indirectly, by the Government, come within the purview of the RTI Act. In coming to the conclusion, this Court reminds itself of the Preamble to the RTI Act which necessitates a construction which will hopefully cleanse our democratic polity of the corrosive effect of corruption and infuse transparency in its activities. In this context, a few lines from Joseph Pulitzer, in a slightly different context, will be very apt and are reproduced hereunder: "There is not a crime, there is not a dodge, there is not a trick, there is not a swindle which does not live by secrecy. Get these things out in the open, describe them, attack them, ridicule them in the press, and sooner or later public opinion will sweep them away." (emphasis supplied)

27. A Division Bench of the Kerala High Court in V.S.Lee Vs. State of Kerala represented by Chief Secretary and others, reported in 2010 (1) ILR (Ker) 606, while dealing with the question as to whether an aided college in State of Kerala would come within the definition of 'public authority' as defined in Section 2(h)(d) of the Right to Information Act, 2005. After considering few decisions, including a case in Thalapalam S.C.B.Ltd

Vs. Union of India reported in 2009(2) KLT 507, the Hon'ble Division Bench held as follows: .Adverting to the preamble to the RTI Act, the learned Judge held that it is abundantly clear that the scope of the Act is much wider in its applicability than getting confined to Governments and their instrumentalities and that the Act is intended to harmonise the conflict between the right of the citizens to secure access to information and the necessity to preserve confidentiality of sensitive information. Noticing that even the preamble states that the Act is intended to provide the practical regime of right to information in order to promote transparency and accountability in the working of every public authority, it has been held that in terms of Sections 3 and 4, the public authorities are obliged to supply information. Considering the definition of 'public authority' in Section 2(h), it has been laid down that on the basis of the undisputed facts regarding the control and funding of the aided private colleges after the introduction of the Direct Payment Scheme, such an institution falls within the definition of the term 'public authority' notwithstanding whether it may, or not, be 'State' within Article 12 of the Constitution. It was specifically held that the Act is not confined to bodies answering the definition of 'State' under Article 12, which definition primarily governs enforcement of fundamental rights. Holding that the Act is intended at achieving the object of providing an effective framework for effectuating the right to information recognised under Article 19 of the Constitution, it has been held that aided private colleges in the State of Kerala fall within the term 'public authority' in the RTI Act.

23. Noticing the aforesaid, it was held by this Court in Thalapalam (1), as follows:

"17. We, the People of India have constituted ourselves into a democratic Republic; that Nation and her People, being governed by the Constitution of India. Democracy requires an informed citizenry and transparency of information that are vital to its functioning. Availability of information is necessary to contain corruption. The instrumentalities which meddle with public funds or with the interest of the citizens are to be made accountable. In actual practice, revelation of information is likely to conflict with other public interests, including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. It is necessary to harmonise these conflicting interests while preserving the paramount status of the democratic ideal. The RTI Act is enacted in this constitutional backdrop. The object sought to be achieved by that enactment is to provide for setting out the practical regime of right to information for citizens to secure access to information. The purpose of that is to promote transparency and accountability in the working of every public authority. The RTI Act is a mode to access information. What may come out ultimately could be the assurance that all is well; or should be shocking revelations which may call for appropriate action. This again, would be a matter of concern for the citizenry .

18. As already noticed, the right to information and, therefore, the right of access to information are species of fundamental rights referable to the freedom of speech, enumerated in the Constitution as a fundamental right. This conceptualization is part of the law laid by the Apex Court in the precedents noted above. They are therefore part of the law of the land as emanating from the Constitution, that too, from Part III itself. Effectuation of the fundamental rights does not require any legislation. It inheres unitarily in every citizen and collectively in the citizenry, as a lot. Legislation can be to effect restrictions on the enjoyment of the fundamental rights; to the extent restrictions are permissible within the constitutional parameters. or, legislations could provide for the free and orderly flow of the modality for the enjoyment of those rights. While the former is a restrictive covenant on the enjoyment and could affect only those who are entitled to enjoy, the latter class of legislative provisions are intended to provide the procedure to reach at the guaranteed fundamental rights, hassle-free.

19. Analysing the RTI Act with the aforesaid in mind, it can be seen that the provision in section 3 thereof that subject to the provisions of that Act, all citizens shall have the right to information, is the legislative recognition of the constitutional right of every citizen to information, including the right to access information. The provisions in the RTI Act, subject to which the citizen could enjoy the right to information, are laws amounting to restrictions made by the Parliament on the right to information and the right to access information, and therefore, restrictions on the freedom of speech. The legitimacy of any such restriction has to answer the constitutional touchstones. The authority to make such restriction is provided for and controlled by

Article 19(2) of the Constitution. The said provision enumerates the grounds on which a restriction could be imposed by law on the citizens' fundamental right to freedom of speech and expression. The authorization to make law imposing reasonable restrictions on that fundamental right is confined to be only in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Unlike in clause (6) of that Article which carves out the limits of legislative permissiveness to impose restrictions on the fundamental right to the freedom to practice any profession or to carry on any occupation, trade or business, clause (2) of Article 19 does not provide the interest of the general public as a ground on which the right to freedom of speech and expression could be curtailed. This distinction is well established. See, Sakal Papers (P) Ltd. V. Union of India [AIR 1962 SC 305]. Unless justified under clause (2) of Article 19, any restriction on the fundamental right guaranteed by Article 19(1) (a) would be plainly violative of the freedom of speech and expression, a valuable and cherished fundamental right. The parliamentary presentment through the RTI Act is not a statutory conferment of a right that could be passed off as merely a statutory right. For, legislation cannot whittle down a fundamental right guaranteed under the Constitution.

24. Dilating on the inclusive component of the definition of "public authority", it was held in Thalapalam (1) that the legislative provision by funds provided by is a clear and specific expression that such funds need not necessarily belong to the Government but which would be within the regulatory control of the Government for being provided to such authorities. It was laid down that the essence of the act of providing is the making available of what is required to be provided. In this view of the matter, it was held that "funds provided by the appropriate Government" is not necessarily providing funds from what belong to the appropriate Government, either exclusively or otherwise, but also those provisions which come through the machinery of the appropriate Government, including by allocation or provision of funds with either the concurrence or clearance of the appropriate Government. This view emanates on a plain reading of the provision under consideration, having regard to the object sought to be achieved by the RTI Act and in this view, the said provision has to be read to take within its sweep all funds provided by the appropriate Government, either from its own bag or funds which reach the societies through the appropriate Government or with its concurrence or clearance. This view was further buttressed stating as follows: Not only do I find no ground to exclude this interpretation, but see much support for it. If the legislative intention were not so, it was unnecessary to state in the RTI Act "..... substantially financed..... by funds provided by.....". It would have been sufficient to state "..... substantially financed by.....". The use of the words "by funds provided by" enlarges and dilates the scope of the words "substantially financed" in that provision. It has to be remembered that it would never be assumed that the legislature uses language superfluously. The courts will not treat any legislative usage as surplusage, but will look at the very use of the language by the legislature, as intentional of conveying the true and complete meaning of what the legislature intended to say. As stated by the Apex Court in Babaji Kondaji Garad v. Basik Merchants Coop. Bank Ltd. [(1984) 2 SCC 50], the Legislature uses appropriate language to manifest its intentions. Arming of citizenry with information is not a matter that should be trimmed, crippled, clipped or excluded. It ought to be permitted to be available wherever it could, except where it is impermissible. This is why even in the Act, which transformed the concept of freedom of information to be that of a right to information, clear and specific exceptions and exclusions are legislatively provided and they are the only prohibited zones insulated from access under the RTI Act. This object of the RTI Act has to be achieved and the interpretation adopted above is purposive, to give effect to the legislative intention of that statute.

28. In New Tirupur Area Development Corporation Ltd v. State of Tamil nadu reported in 2010 (5) CTC 98, after considering certain decisions on this aspect, this Court held as follows:

"24. On the question of being substantially financed, there is no clear definition as to what is meant by the term 'substantially financed'. The Supreme Court while dealing with the Taxation on Income (Investigation Commission) Act, 1947 (Central Act 30 of 1947), had an occasion to deal with a provision where the term substantive was attacked as vague and after its amendment indicating the quantum, the

provision was held to be definite and clear vide its judgment in Shree Meenakshi Mills Ltd. v. Visvanatha Sastri, 1955 (1) SCR 787; AIR 1955 SC 13. The following passage found in paragraph 13 may be usefully extracted below: 3. It was argued in Mohta's case (A) as well as in these Petitions that the classification made in Section 5(1) of the impugned Act was bad because the word substantial used therein was a word which had no fixed meaning and was an unsatisfactory medium for carrying the idea of some ascertainable proportion of the whole, and thus the classification being vague and uncertain, did not save the enactment from the mischief of Article 14 of the Constitution. This alleged defect stands cured in the amended Section 34 inasmuch as the legislature has clearly indicated in the statute what it means when it says that the object of the Act is to catch persons who to a substantial extent had evaded payment of tax, in other words, what was seemingly indefinite within the meaning of the word substantial has been made definite and clear by enacting that no evasion below a sum of one lakh is within the meaning of that expression. Since the present Act do not quantify the amount of funding required the Court will have to apply proper test in each case and apply the provisions of the RTI Act to those authorities.

25. Under the RTI Act, quantum of the finance to hold a body being considered as substantially financed is not specified. That was why this Court in Tamil Nadu Road Development Company Limited, rep. by its Director-in-charge, Chennai v. Tamil Nadu Information Commission, 2008 (8) MLJ 17, which was confirmed by the Division Bench vide judgment Tamil Nadu Road Development Company Limited, rep. by its Director-in-Charge, Chennai v. Tamil Nadu Information Commission, rep. by its Registrar, Chennai and another, 2008 (6) MLJ 737, in paragraph 16 observed as follows: 6. In this context, the plea of the Petitioner is that the said two amounts are meager which should not be treated as substantially financed. The word substantial is not defined in the Act. For the word substantial it is not possible to lay down any clear and specific definition. It must be a relative one, however, substantial means real or actual as opposed to trivial. Substantial also means practicable or as far as possible, hence the word substantial not to be construed as higher percentage of the estimated amount or otherwise. The said financial assistance and also exclusive privilege conferred on the Petitioner in exclusion of others to lay the road, which is one of the Governmental functions of public importance, this Court applying the provisions of Section 2(h) of the Act in harmony with its objects and reasons is of the view that the Petitioner is a public authority.

29. In the light of the above, this Court is not inclined to accept the submissions of the learned Senior Counsel for the petitioner that the Colleges is not substantially financed to come within the purview of the Act. In a given case, if the College denies admission to a meritorious student, for any reason, and if the College denies to part with the information for such denial, citing that it is not a public authority, then such meritorious student, cannot be compelled to approach the Court of law, bereft of any fact, as to why, the admission was denied.

30. Again, in a given case, if any College, receiving aid from the Government, indulges in mismanagement of the fund or commits any financial irregularities of such fund, any public interested person, can seek for information, as to how the grant-in-aid is spent. If the College receives any concession from the Government or receives a grant or sanction for disbursement of fee concession to any under privileged person and if the same is not fully paid or partly paid, then the aggrieved student or any person, with a probona interest can seek for information.

31. Once public money is paid to the College for the purpose of imparting education and when public policies towards implementation of achieving social justice is sought to be enforced in any educational institution, by the State, then it is incumbent on the educational authorities, to implement the same and that no college can be permitted to take a defence that it does not come within the purview of the Act, and that the Public Information Officer cannot issue any direction to the College to disclose any information to the applicant. Such a stand would be defeat the very purpose and object of the Act.

32. As rightly contended by the learned counsel for the 2nd respondent, it is not open to the College, to compare their whole expenditure, to that of the quantum of aid, granted by the Government on the ground that

it is less and therefore, on that ground to contend that there is substantial funding and hence, the College does not come within the purview of the Act. This Court is of the view that the quantum of grant does not always decide the applicability of the provisions of RTI Act, to an educational institution or any other body established or constituted, (a) by or under the constitution; (b) by any other law made by Parliament; (c) by any other law made by the State Legislature; (d) by any notification issued or order made by the appropriate Government, and includes any, (i) body owned, controlled or substantially financed; and (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government, but it should be referable to the activity carried on by such entities, involving public interest and public duty, which includes an educational institution.

33. According to the 2nd respondent, the information sought for, relates to fee structure of ME/MCA courses and that the said information, would not come within the purview of exempted information, under Section 8 of the Act nor it would have an effect on privacy. It cannot be said to be the abovesaid information, is exempted under the Act, or disclosure of which, has no relationship to any public activity or interest.

34. Imparting education is a public activity and that no educational institution can take shelter and contend that it does not come within the purview of the Act. Once grant is received by an Educational Institution, the word, substantial has to be interpreted to sub-serve only the activity and it must be taken only as a term, relative to the activity and not to be compared with the total expenditure of the College. In the present case, the petitioner-College is conducting some courses aided by the Government and certain other courses, not aided by Government.

35. The expression, Public Duty means the duty in discharge of which, the State, Public or Community at large, has interest. Therefore, when the educational institutions discharges public duty, in aiding the State in imparting education, the Community at large, has an interest to seek for information, except those, which are exempted from disclosure under the Act. Imparting education is a public function. The following cases, though deal with a challenge to the maintainability of a writ petition against an educational institution, yet on the aspect of public duty and functions, performed by the educational institution, this Court deems it fit to reproduce the same. (i) In Andi Mukta Satguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R.Rudani and others reported in 1989 (II) LLJ 324, the appellant was a Science College run by a Public Trust, affiliated to Gujarat University. At paragraphs 20 and 22, the Supreme Court held as follows: "The words "any person or authority" used in Article 226 are therefore not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied. (para 20) Mandamus cannot be denied on the ground that the duty to be enforced is not imposed by charter, common law, custom or even contract. Judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should no come in the way of granting that relief under Article 226. (para 22)" In the above reported case, the Supreme Court has further held that,

"To the Trust managing the affiliated college, public money is given as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Governmental Institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating university. Their activities are closely supervised by the University authorities. Employment in such Institution is not devoid of any public character. So are the service conditions of the academic staff. Their service conditions are not purely of a private character and such service conditions has super-added protection by university decisions creating a legal right duty relationship between the staff and the management. When there is existence of this relationship, mandamus

cannot be refused."

(ii) In *Rakesh Gupta v. State of Hyderabad* reported in AIR 1996 AP 413, a Division Bench of the Andhra Pradesh High Court considered the scope and extent of power under Article 226 of the Constitution of India and the use of the word or expression "any person or authority" occurring under Article 226 of the Constitution of India. The Court observed as follows: "The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on that body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed; and The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartments. It should remain flexible to meet the requirements of various circumstances.

(iii) In *K.Krishnamacharyulu v. Sri Venkateswar Hindu College of Engineering* reported in 1997 (3) SCC 571, the appellant and six others were appointed on daily wages to the post of Lab Assistant as non-teaching staff in the respondent-private college. The Writ Petition and Appeal seeking equal pay were dismissed. Aggrieved by the same, they moved the Apex Court. The question which came up for consideration before the Supreme Court was when there were no statutory rules issued regarding pay scales to be fixed on par with the Government employees and the private Institution, being not in receipt of any grant-in-aid, whether the Writ Petition under Article 226 of the Constitution is maintainable? The Supreme Court, at Paragraph 4, observed as follows: "The question is when there are no statutory rules issued in that behalf, and the institution, at the relevant time, being not in receipt of any grants-in-aid; whether the Writ Petition under Article 226 of the Constitution of India is not; maintainable? In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in the performance of their duties.We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The Private Institutions cater to the need of providing educational opportunities."

(iv) In *P.A.M. Sundaravel v. Chief Educational Officer and two others*, reported in 1998 Writ L.R. 565, a student sought for a Mandamus directing the respondents to select him for 11th Standard computer course during the year 1997-98 in a Private School recognised by the State Government. One of the objections was to the maintainability of the Writ Petition against the private institution. After considering the element of public duty involved in imparting education, this Court, at Paragraphs 8 and 10, held as follows: "The school is a recognised one and is also governed by relevant Statute. Its activities are also controlled by first respondent, though the actual management is by the Board as per its own Bylaws. The School, while discharging its duties as per statute, and that too, while it is imparting education to children at large, cannot be said as not discharging a public duty. Though it is a private institution, it discharges a public function governed by relevant statutes, subject to the control of the Statutory authorities. Except for the Computer course, financial aid is also received from Government. A writ can be issued the respondents and the first respondent is duty bound to see that the petitioner's son is not denied admission as he is legally entitled to the same."

(v) The Division Bench of this Court in *John Paulraj A.P. v. CBSE, Chairman, New Delhi*, reported in 1999 (III) LLJ (Supp.) 628, considered a case, as to whether a Writ Petition filed against an unaided educational institution can be brought within the ambit of Article 12 of the Constitution of India. In the said case, the appellant was terminated from service, without proper reasons. A learned single Judge, who adjudicated the validity of the said order, dismissed the Writ Petition, agreeing with the contention of the School that an unaided private school is not amenable to Writ jurisdiction, since it is not a State or instrumentality of the State within the ambit of Article 12 of the Constitution of India. Before the appeal, it was contended inter alia that availing grant or aid from the Government cannot by itself, be a deciding factor for holding that a Writ Petition as maintainable. Taking into consideration, the nature of public duty, i.e., imparting of education to

the students at large, as envisaged under Article 41 of the Constitution of India and after considering a catena of decisions, the Division Bench held that a Writ would lie even against unaided private educational institution also, if an element of public interest and a corresponding public duty is attracted in the proceedings sought to be challenged in such Writ Petition. (vi) A passage from the judgment in *Unni Krishnan, J.P. v. State of Andhra Pradesh* reported in AIR 1993 SC 2179, extracted in John Paulraj's case, would be useful and the same is reproduced hereunder:

"The fact that these institutions perform an important public function coupled with the fact that their activity is closely intertwined with governmental activity, characterises their action as 'State action'. At the minimum, the requirement would be to act fairly in the matter of admission of students and probably in the matter of recruitment and treatment of its Employees as well. The private educational institutions merely supplement the effort of the State in educating the people, as explained above. It is not an independent activity. It is an activity supplemental to the principal activity carried on by the State."

(vii) In Islamic Academy of Education v. State of Karnataka reported in AIR 2003 SC 3724, the petitioners therein were mostly unaided professional educational institutions, both minority and non-minority. It was inter alia contended that the private unaided professional educational institutions, had been given complete autonomy not only as regards admission of students, but also determination of their own fee structure. It was also contended that these institutions could fix their own fee structure, which could include a reasonable revenue surplus for purposes of development of education and expansion of the institution, and that so long as there was no profiteering or charging of capitation fees, there could be no interference by the Court. Per contra, on behalf of the Union of India, various State Governments and some students, who sought to intervene, it was submitted that right to set up and administer an educational institution was not an absolute right, and this right is subject to reasonable restrictions and that, this right is subject (even in respect of minority institutions) to national interest. It was further submitted that imparting education was a State function, but, due to resources crunch, the States were not in a position to establish sufficient number of educational institutions. Though the issue was with regard to fee structure, the Supreme Court also considered as to whether the Government is denuded of its power to lay down any law, just because the Institutions were once recognised or affiliated to the examining body. At Paragraphs 217 and 219, the Supreme Court, held as follows: "Although the minorities have a right to establish institutions of their own choice, they admittedly do not have any right of recognition or affiliation for the said purpose. They must fulfill the requirements of law as also other conditions which may reasonably be fixed by the appropriate Government or the University. (para 217) It cannot be said that once recognition has been granted, no further restriction can be imposed. There exist some institutions in this country which are more than a century old. It would be too much to say that only because an institution receives recognition/affiliation at a distant point of time the appropriate Government is denuded of its power to lay down any law in imposing any fresh condition despite the need of change owing to passage of time. Furthermore, the Parliament or the State Legislature are not denuded of its power having regard to restrictions that may satisfy the test of Clause (6) of Article 19 of the Constitution of India or regulations in terms of Art. 30 depending upon the national interest/public interest and other relevant factors. However, the State/University while granting recognition or the affiliation cannot impose any condition in furtherance of its own needs or in pursuit of the Directive Principles of State Policy. (para 218 and 219)" (viii) In Sushmita Basu v. Ballygunge Siksha Samity and others in 2004 (4) LLN 195 (SC), the teachers of a recognised Private School filed a Writ Petition for implementation of the third pay commission. The management, though implemented the recommendations of the third pay commission in the sense that salaries of the teachers were hiked in terms of the said report, the institution refused to give retrospective effect to the enhancement. In other words, the institution refused to give effect to the recommendations of the Third Pay Commission with effect from 1st January 1988, as recommended by the Commission and as implemented by the Government. Though the Supreme Court, accepted the views expressed earlier in K. Krishnamacharyulu and others v. Sri Venkateswara Hindu College of Engineering and another reported 1997 (3) SCC 571, that interference under Article 226 of the Constitution of India for issuing the Writ against the Private Institution like the first respondent therein would be justified if Public law element is involved and in Private law remedy, no Writ Petition would lie and Writ of Mandamus cannot be

issued to recognised Private School to fix the salaries to teaching and non-teaching staffs to remove all the anomalies. The Supreme Court, on principle, has affirmed the dictum that Writ Petition would lie against Private Educational Institution, but disallowed the claim of the teachers for giving retrospective effect to the pay fixation. (ix) In *P.A. Inamdhar v. State of maharashtra* reported in 2005(6) SCC 537, the Supreme Court after considering a catena of decisions dealt with the right of educational institution in fixing the fee structure and its autonomy, at para 89 held that

“89. Education, accepted as a useful activity whether for charity or for private is an occupation. Nevertheless, it does not cease to be a service to Society. And even though an occupation, it cannot be equated to a trade or a business”;

(x) In *Binny Ltd., v. Sadasivan* reported in 2005 (6) SCC 657, the maintainability of a Writ Petition against private employers, was the moot question. The Supreme Court, after considering a catena of decisions, held that a Writ of Mandamus or remedy under Article 226 of the Constitution of India, though pre-eminently a public law remedy, is available against a private body or a person, if (a) such private body is discharging public function, (b) a decision sought to be corrected or enforced is in discharge thereof and (c) public duty imposed is not of a discretionary character. The Supreme Court further held that the scope of mandamus is determined by the nature of duty to be enforced rather than the identity of the authority, against whom it is sought. While explaining what is public function, the Apex Court, held that a body is performing a “public function” when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies, therefore exercise public function, when they intervene or participate in social or economic affairs in the public interest. The Dictum of the Supreme Court is explained at Paragraphs 9 to 11 and 29 and the same are extracted hereunder: “9. The superior court’s supervisory jurisdiction of judicial review is invoked by an aggrieved party in myriad cases. High Courts in India are empowered under Article 226 of the Constitution to exercise judicial review to correct administrative decisions and under this jurisdiction the High Court can issue to any person or authority, any direction or order or writs for enforcement of any of the rights conferred by Part III or for any other purpose. The jurisdiction conferred on the High Court under Article 226 is very wide. However, it is an accepted principle that this is a public law remedy and it is available against a body or person performing a public law function. Before considering the scope and ambit of public law remedy in the light of certain English decisions, it is worthwhile to remember the words of Subba Rao, J. expressed in relation to the powers conferred on the High Court under Article 226 of the Constitution in *Dwarkanath v. ITO*, “This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression ‘nature’, for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.

10. The writ of mandamus lies to secure the performance of a public or a statutory duty. The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities. Originally, the writ of mandamus was merely an administrative order from the Sovereign to subordinates. In England, in early times, it was made generally available through the Court of King’s Bench, when the Central Government had little administrative machinery of its own. Early decisions show that there was free use of the writ for the enforcement of public duties of all kinds, for instance against inferior tribunals which refused to exercise their jurisdiction or against municipal corporations which did not duly hold

elections, meetings, and so forth. In modern times, the mandamus is used to enforce statutory duties of public authorities. The courts always retained the discretion to withhold the remedy where it would not be in the interest of justice to grant it. It is also to be noticed that the statutory duty imposed on the public authorities may not be of discretionary character. A distinction had always been drawn between the public duties enforceable by mandamus that are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary contractual remedies such as damages, injunction, specific performance and declaration. In the *Administrative Law* (9th Edn.) by Sir William Wade and Christopher Forsyth (Oxford University Press) at p.621, the following opinion is expressed: A distinction which needs to be clarified is that between public duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by mandamus, which in the first place is confined to public duties and secondly is not granted where there are other adequate remedies. This difference is brought out by the relief granted in cases of ultra vires. If for example a minister or a licensing authority acts contrary to the principles of natural justice, certiorari and mandamus are standard remedies. But if a trade union disciplinary committee acts in the same way, these remedies are inapplicable: the rights of its members depend upon their contract of membership, and are to be protected by declaration and injunction, which accordingly are the remedies employed in such cases.

11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on *Judicial Review of Administrative Action* (5th Edn.) by de Smith, Woolf & Jowell in Chapter 3, para 0.24, it is stated thus: A body is performing a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides public goods or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing. Public functions need not be the exclusive domain of the State. Charities, self-regulatory organisations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to recognise the realities of executive power and not allow their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted. Non-governmental bodies such as these are just as capable of abusing their powers as is Government.

29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies. According to Halsbury's Laws of England, 3rd Edn., Vol. 30, p.682, 317. A public authority is a body, not necessarily a county council, municipal corporation or other local authority, which has public or statutory duties to perform and which perform those duties and carries out its transactions for the benefit of the public and not for private profit.

There cannot be any general definition of public authority or public action. The facts of each case decide the point."

(xi) In *L. Nageswaran v. State of T.N.*, reported in 2009 (1) MLJ 729, there was revision of fee structure in the middle of the academic year by a Matriculation School, managed by Bishop of Madras CSI Diocese. The primary objection was with regard to the maintainability of the Writ Petition. A learned Single Judge of this Court held that the Matriculation School, though minority in character, administered by Dioceses, is exercising a public function and as such, it is amenable to Writ jurisdiction.

(xii) In *Sendhilkumar v. Shri Angalamman College of Engg., & Technology* reported in 2009 (3) MLJ 774, a dismissed non-teaching staff of a private unaided college run by a private trust, challenged the order of dismissal. The main objection of the college was that it does not get any aid from the Government and therefore, the Writ Petition filed against them is not maintainable. Following the decisions in Andi Mukta Satguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R.Rudani and others reported in 1989 (II) LLJ 324, this Court has held that the entire educational institution as a whole should be held to be as one unit which discharges its public duty of imparting education to the students and therefore, there cannot be any distinction between teaching and non-teaching staff, while applying Article 226 of the Constitution of India. Holding that the Writ Petition as maintainable, this Court has set aside the impugned order. (xiii) In *The Governing Council of American College v. The Director of Collegiate Education*, reported in 2009 (4) CTC 401, the issue before the Division Bench of this Court was whether an aided minority college is amenable to Writ jurisdiction. Following the decisions in Andi Mukta Satguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R.Rudani and others reported in 1989 (II) LLJ 324 and Secretary, Malankara Syrian Catholic College v. T.Jose reported in 2007 (1) SCC 386, the Division Bench, at Paragraph 21, held as follows: "21. At the outset, we wish to point out that the objection to the maintainability of the writ petition on the ground that the institution is a Society, does not hold water any more. Article 226(1) empowers this Court to issue directions, orders or writs to "any person or authority". Therefore even a Society is amenable to the writ jurisdiction, provided there is an element of public duty. In Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani [1989 (2) SCC 691], a Trust registered under the Bombay Public Trusts Act, was held amenable to the writ jurisdiction. It was held therein that when public money is paid as Government aid, the aided institutions discharge public functions and they become subject to the Rules and Regulations of the Affiliating University. Therefore, the Supreme Court opined that employment in such institutions is not devoid of any public character. Again in K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering [1997 (3) SCC 571], the Supreme Court held a writ filed even by the employees of unaided private educational institution as maintainable on the ground that the teachers get an element of public interest

in the performance of their duties. Hence the contention that a writ against a Society is not maintainable, cannot be accepted as of universal application, especially since the institution in question in these appeals, receives grant-in-aid from the Government."

(xiv) In Executive Committee of Vaish Degree College (Three Judges), at Paragraph 79 of the judgment, has categorically held that,

"79. The emphasis in this case is as to the nature of duty imposed on the body. It requires to be observed that the meaning of authority under Article 226 came to be laid down distinguishing the same term from Article 12. In spite of it, if the emphasis is on the nature of duty on the same principle it has to be held that these educational institutions discharge public duties. Irrespective of the educational institutions receiving aid it should be held that it is a public duty. The absence of aid does not detract from the nature of duty."

36. Courts have consistently held that while exercising the equitable jurisdiction under Article 226 of the Constitution of India, it is necessary to examine as to whether, such an individual body or association or society etc., discharges public duty and if it is so, whether there is any pervasive control over the activity in the discharge of public duty. Imparting education is now well recognised as a public duty, taken up by private institutions, duly recognised by the competent authorities, either under the Statute or the Government orders, issued from time to time.

37. Reverting back to the case on hand, certainly, the expenditure for payment of fees for the staff engaged in conducting unaided courses has to be incurred by the College. Therefore, it may be not substantial for the entire expenditure incurred by the College. But that does not mean that the College, which has engaged in public function of imparting education, controlled by the educational authorities, has no duty to part with any information to the Public, relating to such activity. Collection of fees by the educational authorities is regulated by the Government under a duly constituted committee and therefore, a student or a parent or anybody, who is interested in the welfare of the students and in matters, relating to implementation of public policies and orders of the Government, particularly in the matter of fee structure, is entitled to seek for details from the College and he cannot be termed as a busy body to meddle with the functions of a College. The word, 'substantial' in the Right to Information Act has been interpreted to mean, 'practical and as far as possible' and not a higher percentage of the grant or otherwise. As stated supra, the estimated expenditure of the petitioner-college is likely to be more, when the college conducts courses unaided by the Government. But the petitioner-College cannot deny the fact that the amounts received by way of grant, represent the salary to the teaching and other staff, engaged in the aided courses and also of the fact that professional engineering colleges are also permitted to collect developmental charges by AICTE for the infrastructure provided by them to the students. In a given case, if the fee collected by the College is not in accordance with Government guidelines or for that matter, if there is any mismanagement of the funds granted to the College, the information sought for is required to be furnished in 'public interest', which is defined in Shrods Judicial Dictionary, Vol.4 (IV Edition), as, "'A matter of public or general interest, does not mean that which is a interesting as gratifying curiosity or a love of information or amusement but that in which a class of community have a pecuniary interest, or some interest by which their legal rights or liability are affected.

38. In Black's Law Dictionary (Sixth Edition), 'Public Interest', is defined as follows:

"'Public Interest' Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interest of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local State or national government....."

39. The Division Bench of Kerala High Court in V.S.Lee's case (cited supra) has answered all the issues, that are raised by the petitioner-college. Thiagarajar College of Engineering, Madurai, is a Government Aided ISO 9001-2000, Certified Autonomous Institution, affiliated to Anna University. The Letter Head produced

before the Commission makes it clear that it is aided. Though the College has been given autonomous status, but that does not mean that it need not implement any public policy or decision of the Government. So long as the activity undertaken by an educational institution is a public function or policy duty, it is bound by the provisions of the Right to Information Act, 2005. Once the College is declared as a Government aided college and when the said fact is also reflected in their own letter head, in the opinion of this Court, there is no need to follow the procedure contemplated under the Act, for summoning and enforcing attendance of persons and to compel them to give oral or written evidence, on oath and to produce documents or things; requiring the discovery and inspection of document; receiving evidence on affidavit, etc., before arriving at the conclusion, as to whether the petitioner-college is a public authority under the Act or not. It would be nothing but a useless formality. The said exercise is required to be undertaken only when there is no substantial or adequate material or evidence available with the Commission. Principles of natural justice is not a straight jacket formula. Facts already available on record need not be reaffirmed by examination of any witness or summoning of documents. An educational institution receiving aid from the Government cannot refuse to divulge any information, which attracts public interest. Considering the own admission of the petitioner-College that it is aided by Government, this Court is of the view that the Commission has not committed any procedural irregularity.

40. In *Shivanna Naik v. Bangalore University & Anr.*, reported in AIR 2006 NOC 145 (KANT.), a learned Single Judge of the Karnataka High Court has held that Karnataka University is an authority under Article 12 of the Constitution of India and hence, governed by the provisions of the Right to Information Act. When a University is recognised as an authority, educational institutions affiliated to the University, would also come within the purview and definition, public authority and amenable to the provisions of Right to Information Act.

41. Public Interest means an act beneficial to the general public. Means of concern or advantage to the public, should be the test. Public interest in relation to public administration, includes honest discharge of services of those engaged in public duty. To ensure proper discharge of public functions and the duties, and for the purpose of maintaining transparency, it is always open to a person interested to seek for information under the Right to Information Act, 2005. Therefore, the petitioner-College, a person discharging public duty, in aid of the State, can be brought within the definition of, public authority. Right to Information has been recognised as a Fundamental Right and that only condition to be satisfied is that the information sought for, should foster public interest and not encroach upon the privacy of an individual or it should be exempted under the Act.

42. In view of the above discussion, the Writ Petition deserves to be dismissed and accordingly, dismissed. No costs.

To

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